



PUBLIC NOTICE

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DA 13-323
March 29, 2013

**TRIBAL MOBILITY FUND PHASE I AUCTION SCHEDULED FOR
OCTOBER 24, 2013**

**COMMENT SOUGHT ON COMPETITIVE BIDDING PROCEDURES FOR
AUCTION 902 AND CERTAIN PROGRAM REQUIREMENTS**

AU Docket No. 13-53

Comments Due: May 10, 2013

Reply Comments Due: May 24, 2013

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I. INTRODUCTION AND SUMMARY

1. By this Public Notice, the Wireless Telecommunications and Wireline Competition Bureaus (the Bureaus) announce a reverse auction to award up to \$50 million in one-time Tribal Mobility Fund Phase I support and seek comment on auction procedures and certain related programmatic issues. This auction is scheduled to begin on October 24, 2013, and is designated as Auction 902.

2. Tribal Mobility Fund Phase I will provide one-time support to deploy mobile voice and broadband services to unserved Tribal lands, which have significant telecommunications deployment and connectivity challenges.¹ Auction 902 will award high-cost universal service support through reverse competitive bidding, as envisioned by the Commission in the *USF/ICC Transformation Order*.² Auction 902 will award one-time support to carriers that commit to provide 3G or better mobile voice and broadband services on Tribal lands where such services are unavailable,³ based on the bids that will maximize the population covered by new mobile services without exceeding the budget of \$50 million.⁴ Because the objective of this auction is to maximize the expansion of advanced services with the available funds, winning bids will generally be those that would achieve the deployment of such services for relatively lower levels of support.

3. Many of the pre-auction processes and bidding procedures for this auction will be similar to those used in the Commission's first auction of universal service support, Auction 901,⁵ which were modeled on those regularly used for the Commission's spectrum license auctions. In Auction 902, support for Tribal lands generally will be awarded on the same terms and subject to the same rules as general Mobility Fund Phase I support with a few exceptions tailored to address the unique needs of communities on Tribal lands.⁶ Specifically, unlike general Mobility Fund Phase I, for which the number of "units" in a given unserved census block were calculated according to the number of road miles in that

¹ Connect America Fund, WC Docket No. 10-90, A National Broadband Plan for Our Future, GN Docket No. 09-51, Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135, High-Cost Universal Service Support, WC Docket No. 05-337, Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Lifeline and Link-Up, WC Docket No. 03-109, Universal Service Reform – Mobility Fund, WT Docket No. 10-208, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161, 26 FCC Rcd 17663, 17819, para. 481 (2011) (*USF/ICC Transformation Order*), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011). The *USF/ICC Transformation Order* contains a definition of "Tribal lands." *Id.* at 17711, para. 126 n.197. That definition, as applied to the proposed eligible areas for Auction 902, is discussed below. See section III.A. & n.38, below.

² *USF/ICC Transformation Order*, 26 FCC Rcd at 17818-23, paras. 479-91.

³ We use the terms "3G," "3G or better," "current generation," and "advanced" interchangeably to refer to mobile wireless services that provide voice telephony service on networks that also provide services such as Internet access and email. We refer throughout this Public Notice to "awarding" or "selecting awardees" by auction for simplicity of expression. As provided by the Commission's rules, 47 C.F.R. §§ 54.1005(b) and 54.1008(a), and discussed further below, each party that becomes a winning bidder in the auction must file an application for support. Only after review of the application to confirm compliance with all the applicable requirements will a winning bidder become authorized to receive support.

⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17822, para. 488 (concluding that a population-based metric is appropriate for the Tribal Mobility Fund Phase I auction).

⁵ See Mobility Fund Phase I Auction Scheduled for September 27, 2012; Notice and Filing Requirements and Other Procedures for Auction 901, *Public Notice*, AU Docket No. 12-25, DA 12-641, 27 FCC Rcd 4725 (2012) (*Auction 901 Procedures Public Notice*). Information on Auction 901, including copies of all Auction 901 Public Notices and auction results, may be found on the Commission's Auction 901 web page at: <http://wireless.fcc.gov/auctions/901>.

⁶ *USF/ICC Transformation Order*, 26 FCC Rcd at 17820, 17822, paras. 484, 488.

block, for Tribal Mobility Fund Phase I, the number of units in a given census block will be the population of that block.⁷ As described further below, the population-based coverage unit is the basic unit that will be used to determine the winners in Auction 902 and to measure compliance with the applicable performance requirements.

4. In this Public Notice, we propose and seek comment on:

- Identifying geographic areas eligible for support;
- Determining the basic auction design, whether and how to aggregate eligible areas for bidding, and how awardees will be selected; and
- Establishing certain other bidding procedures, including information disclosure procedures and methodologies for calculating auction and performance default payments.

The Bureaus will announce final procedures and other important information such as application deadlines and other dates related to Auction 902 after considering comments provided in response to this Public Notice, pursuant to governing statutes and Commission rules.

II. BACKGROUND

5. In the *USF/ICC Transformation Order*, the Commission comprehensively reformed and modernized the universal service system to help ensure the universal availability of fixed and mobile communication networks capable of providing voice and broadband services where people live, work, and travel. The Commission's universal service reforms include a commitment to fiscal responsibility, accountability, and the use of market-based mechanisms, such as competitive bidding, to provide more targeted and efficient support than in the past. For the first time, the Commission established a universal service support mechanism dedicated exclusively to mobile services—the Mobility Fund.

6. Pursuant to the *USF/ICC Transformation Order*, the Commission conducted the first Mobility Fund Phase I auction, Auction 901, on September 27, 2012. Auction 901 offered \$300 million in one-time high-cost universal service support to carriers that committed to provide 3G or better mobile voice and broadband services in areas nationwide where such services were unavailable.⁸ There were 33 winning bidders that submitted winning bids for a total of \$299,998,632 in one-time Mobility Fund Phase I universal service support to provide 3G or better mobile voice and broadband services covering up to 83,494 road miles located in 31 states and 1 territory.⁹

7. Tribal Mobility Fund Phase I will provide up to \$50 million in one-time support to address gaps in mobile services by supporting the build-out of current- and next-generation mobile networks on Tribal lands where these networks are unavailable.¹⁰ This support will be awarded by reverse auction with the objective of maximizing the population covered in eligible unserved areas on Tribal lands within the established budget.¹¹ The support offered under Tribal Mobility Fund Phase I is in addition to any ongoing support provided under existing high-cost universal service program mechanisms. Phase II of

⁷ *Id.* at 17822, para. 488. Throughout this Public Notice, the term “per-pop” means per population (or per person) within a given geographic area.

⁸ *See id.* at 17773, para. 299.

⁹ Mobility Fund Phase I Auction Closes; Winning Bidders Announced for Auction 901, *Public Notice*, AU Docket No. 12-25, DA 12-1566, 27 FCC Rcd 12031 (2012) (*Auction 901 Closing Public Notice*).

¹⁰ *USF/ICC Transformation Order*, 26 FCC Rcd at 17819-22, paras. 481-88.

¹¹ *See id.* at 17781-83, 17822, paras. 322-28, 488. We refer to areas without 3G or better services and the population within them as “unserved.” The unserved areas eligible for Tribal Mobility Fund Phase I will be determined as described below in section III.

the Mobility Fund will provide up to \$500 million annually for ongoing support of mobile services, including up to \$100 million annually for a separate Tribal Mobility Fund Phase II.¹² The Commission sought comment on the details for Mobility Fund Phase II, including Tribal Mobility Fund Phase II, in the Further Notice of Proposed Rulemaking (FNPRM) adopted in the *USF/ICC Transformation Order*, and the Bureaus sought further comment in a subsequent Public Notice.¹³

8. *Applicant Eligibility.* The *USF/ICC Transformation Order* established application, performance, and other requirements for Mobility Fund Phase I, including Tribal Mobility Fund Phase I. In order to participate in an auction for Tribal Mobility Fund Phase I support, an applicant must be designated as an eligible telecommunications carrier (ETC) for the areas on which it wishes to bid or, if it is a Tribally-owned or -controlled entity, have a pending application for ETC designation for the relevant areas within the boundaries of the Tribal land associated with the Tribe that owns or controls the entity.¹⁴ The ETC designation must cover a sufficient portion of the bidding area to allow the applicant to satisfy the applicable performance requirements.¹⁵ A Tribal entity that wins support in Auction 902 while its ETC petition is pending must receive an ETC designation prior to support being authorized.¹⁶ An applicant for Auction 902 must also demonstrate that it has access to the spectrum necessary to satisfy the applicable performance requirements.¹⁷ Because of the lead time necessary to receive designation as an ETC and to acquire access to spectrum, prospective applicants that need to do so are strongly encouraged to initiate both processes as soon as possible in order to increase the likelihood that they will be eligible to participate in Auction 902. Carriers subject to the jurisdiction of a state in which they seek designation should petition that state's commission for designation as an ETC to provide voice service. Carriers not subject to the jurisdiction of the relevant state commission should petition the Commission for designation as an ETC.¹⁸ The Bureaus have provided guidance on existing requirements for filing an

¹² *Id.* at 17824, para. 494.

¹³ *Id.* at 18069-85, paras. 1121-88; Further Inquiry Into Issues Related to Mobility Fund Phase II, *Public Notice*, WC Docket No. 10-90, WT Docket No. 10-208, DA 12-1853, 27 FCC Rcd 14798 (2012).

¹⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17823, para. 491; 47 C.F.R. §§ 54.1004(a), 54.1005(a)(3). A Tribally-owned or -controlled entity must have its application for ETC designation pending at the relevant short-form application deadline. *USF/ICC Transformation Order*, 26 FCC Rcd at 17823, para. 491.

¹⁵ *See USF/ICC Transformation Order*, 26 FCC Rcd at 17798-99, paras. 388-92; 47 C.F.R. §§ 54.1003(a), 54.1004(a), 54.1006.

¹⁶ *USF/ICC Transformation Order*, 26 FCC Rcd at 17823, para. 491 (noting that allowing a Tribally-owned or -controlled entity to participate at auction while its ETC petition is pending in no way prejudices the ultimate decision on its pending ETC petition and that support will be disbursed only after it receives ETC designation); *see also* 47 C.F.R. § 54.1004(a).

¹⁷ *USF/ICC Transformation Order*, 26 FCC Rcd at 17799-801, paras. 393-99; 47 C.F.R. § 54.1003(b). The requirement that parties have access to spectrum applies equally to all parties, including Tribally-owned or -controlled entities.

¹⁸ The Commission has established a framework for determining whether a state commission or the Commission itself has jurisdiction to designate ETCs on Tribal lands. First, a carrier serving Tribal lands must petition the Commission for a determination on whether the state has jurisdiction over the carrier. The Commission then determines whether the carrier is subject to the jurisdiction of a state commission or whether it is subject to a Tribal authority given the Tribal interests involved. In the latter case, the Commission has jurisdiction to designate the carrier as an ETC and will proceed to consider the merits of the carrier's petition for designation. *See* Telecommunications Carriers Eligible for Universal Service Support; Standing Rock Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier, *Memorandum Opinion and Order on Reconsideration*, WC Docket No. 09-197, FCC 11-102, 26 FCC Rcd 9160, 9161, para. 4 (2011).

ETC application with the Commission in a separate public notice.¹⁹

9. In addition, an Auction 902 applicant must certify that it is financially and technically capable of providing 3G or better service.²⁰ An applicant seeking to use the 25 percent bidding credit preference for Tribally-owned or -controlled providers must certify that it is a Tribally-owned or -controlled entity and identify the applicable Tribe and Tribal land in its application.²¹ To ensure that Tribal Mobility Fund Phase I support meets the Commission's public interest objectives, recipients will be subject to a variety of obligations, including performance, coverage, collocation, voice and data roaming requirements, and Tribal engagement obligations.²² Among other things, winning bidders will be required either to deploy 3G service within two years, or 4G service within three years, after the date on which it is authorized to receive support.²³ Those seeking to participate in the auction must file a short-form application by a deadline to be announced, providing information and certifications as to their qualifications to receive support.²⁴ After the close of the auction, winning bidders must submit a detailed long-form application and procure an irrevocable stand-by Letter (or Letters) of Credit (LOC) to secure the Commission's financial commitment, along with an opinion letter from counsel.²⁵

10. *Auction Process Overview.* In the *USF/ICC Transformation Order*, the Commission delegated authority to the Bureaus to implement Tribal Mobility Fund Phase I, including the authority to prepare for and conduct an auction and administer program details.²⁶ This Public Notice focuses on establishing the procedures and processes needed to conduct Auction 902 and administer Tribal Mobility Fund Phase I. Parties responding to this Public Notice should be familiar with the details of the *USF/ICC Transformation Order* and the process established for the Commission's first auction of Mobility Fund Phase I support (Auction 901), which serve as the foundation for the process we propose here. After reviewing the comments requested by this Public Notice, the Bureaus will release a public notice detailing final procedures for Auction 902. That public notice will be released so that potential applicants will have adequate time to familiarize themselves with the specific procedures that will govern the auction and with the obligations of support, including rates and coverage requirements that we address later in this Public Notice. Below we summarize the topics on which we seek comment in this Public Notice. We ask that commenters advocating for particular procedures provide input on the costs and benefits of those procedures.

¹⁹ See Eligible Telecommunications Carrier Designation for Participation in Mobility Fund Phase I, *Public Notice*, WC Docket No. 09-197, WT Docket No. 10-208, AU Docket No. 12-25, DA 12-271, 27 FCC Rcd 2054 (2012). Petitions for designation as an ETC should be filed in WC Docket No. 09-197 and WT Docket No. 10-208, and should not be filed in the docket for Auction 902, AU Docket No. 13-53. The Bureaus adopted a protective order limiting access to proprietary and confidential information that may be filed in WC Docket No. 09-197 and WT Docket No. 10-208 in connection with petitions filed for designation as an ETC for purposes of participation in any Mobility Fund auction. See *Petitions For Designation As An Eligible Telecommunications Carrier For Purposes of Participation in Mobility Fund Auctions, Protective Order*, WC Docket No. 09-197, WT Docket No. 10-208, DA 13-81, 28 FCC Rcd 318 (2013).

²⁰ *USF/ICC Transformation Order*, 26 FCC Rcd at 17801-02, paras. 400-05; 47 C.F.R. § 54.1003(c).

²¹ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17823, para. 490; 47 C.F.R. § 54.1004(c).

²² *USF/ICC Transformation Order*, 26 FCC Rcd at 17790-97, 17822-23, paras. 358-85, 489; 47 C.F.R. §§ 54.1004(d), 54.1006.

²³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17791-92, paras. 360-65; see 47 C.F.R. §§ 54.1006(a)-(b).

²⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17804-05, paras. 417-18; 47 C.F.R. §§ 1.21001(b), 54.1005(a).

²⁵ *USF/ICC Transformation Order*, 26 FCC Rcd at 17810-12, paras. 444-51; 47 C.F.R. § 54.1005(b); see also *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4770-72, paras. 169-72.

²⁶ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17783, 17803, paras. 329, 411.

11. *Areas Eligible for Mobility Fund Support.* To assure that support is being used in areas that are not covered by current or next generation mobile networks, the *USF/ICC Transformation Order* provides that the Bureaus will identify areas currently without such services on a census block basis, and publish a list of census blocks deemed eligible for Tribal Mobility Fund Phase I support.²⁷ A list of potentially eligible census blocks, as well as the population associated with each, can be found at: <http://wireless.fcc.gov/auctions/902/>. We seek comment on various issues regarding the census blocks identified as potentially eligible. We will finalize which areas are eligible for support in a public notice establishing final procedures for Auction 902.

12. *Auction Design and Bidding Procedures.* In the *USF/ICC Transformation Order*, the Commission concluded that distributing support through a reverse auction would be the best way to achieve its goal of maximizing consumer benefits with the funds available for Phase I of the Mobility Fund and adopted general competitive bidding rules for that purpose.²⁸ As envisioned by the Commission, parties seeking support will compete in Auction 902 by indicating the amount of support they need to meet the requirements of Tribal Mobility Fund Phase I in the eligible areas on which they bid.²⁹ The Commission indicated that a single-round sealed bid auction format would be most appropriate for Tribal Mobility Fund Phase I, but left the final determination to the Bureaus.³⁰ Based on our analysis of the Mobility Fund Phase I auction results and the opportunity for us to refine the auction format for the purposes of Auction 902, which will offer support for fewer eligible areas than Auction 901, we now seek further comment on the auction format for Tribal Mobility Fund Phase I. As in the Mobility Fund Phase I auction, we propose to award support to maximize advanced services to eligible census blocks that can gain 3G or better mobile services under the Tribal Mobility Fund Phase I budget. In this case, however, we will measure coverage based on population rather than road miles.³¹ Under the auction design options discussed below, bidders would compete not only against other carriers that may be bidding for support in the same areas, but also against carriers bidding for support in other areas nationwide.

13. The list of potentially eligible areas we release in connection with this Public Notice contains 5,554 census blocks, which have an average area of approximately 2.1 square miles and may be smaller than the minimum areas for which carriers seeking support are likely to want to extend service. Thus, carriers bidding for support are likely to bid on groups of census blocks. To address this need to aggregate census blocks for bidding while maintaining a manageable auction process, we propose an aggregation approach and seek comment on any alternative approaches.

14. We seek comment on whether to establish any maximum acceptable bid amounts or reserve amounts. In addition, consistent with recent practice in spectrum license auctions and Auction 901, the Bureaus propose to withhold, until after the close of bidding, information from applicants' short-form applications regarding their interest in particular eligible census blocks. As discussed in more detail below, the Bureaus seek comment on this proposal.

15. *Post-Auction Procedures.* At the conclusion of the auction, each winning bidder will be required to file an in-depth long-form application to demonstrate that it qualifies for Tribal Mobility Fund Phase I support. The long-form application must include information regarding the winning bidder's ownership, eligibility to receive support, eligibility for a Tribal entity bidding credit, if relevant, and

²⁷ See *id.* at 17784-85, paras. 334-37.

²⁸ See *id.* at 17781-83, 17803-07, 17821-22, paras. 322-28, 411-32, 486-87; see also 47 C.F.R. §§ 1.21000 *et seq.*

²⁹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17781, para. 322.

³⁰ *Id.* at 17803-04, paras. 413-15; see 47 C.F.R. §1.21003(b).

³¹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17822, para. 488.

network construction details.³² Winning bidders must also certify that they will offer service in supported areas at rates comparable to those for similar services in urban areas. In this Public Notice, we describe and seek comment on a proposed standard for demonstrating compliance with this requirement. A winning bidder will be liable for an auction default payment if the bidder fails to timely file the long-form application, is found ineligible, is disqualified, or otherwise defaults for any reason. In addition, a winning bidder that fails to meet certain obligations will be liable for a performance default payment. Accordingly, winning bidders will be required to provide an irrevocable stand-by LOC in an amount equal to the amount of support, plus an additional amount which would serve as a performance default payment if necessary. As discussed below, the Bureaus seek comment on how to establish auction and performance default payments.

16. *Tribal Engagement.* Any bidder winning support for areas within Tribal lands—*i.e.*, any bidder winning support in Auction 902—must notify the appropriate Tribal governments of its winning bid no later than five business days after being identified by public notice as a winning bidder.³³ Thereafter, at the long-form application stage and in annual reports, a bidder winning support in Auction 902 will be required to certify that it has substantively engaged appropriate Tribal officials regarding certain minimum discussion topics and provide a summary of the results of such engagement.³⁴ A copy of the certification and summary must be sent to the appropriate Tribal officials when it is sent to the Commission.³⁵ A winning bidder's engagement with the applicable Tribal governments must consist, at a minimum, of discussion regarding: (i) a needs assessment and deployment planning with a focus on Tribal community anchor institutions; (ii) feasibility and sustainability planning; (iii) marketing services in a culturally sensitive manner; (iv) rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and (v) compliance with Tribal business and licensing requirements.³⁶

III. AREAS ELIGIBLE FOR TRIBAL MOBILITY FUND SUPPORT

A. Identifying Eligible Unserved Census Blocks

17. In the *USF/ICC Transformation Order*, the Commission decided to target Mobility Fund Phase I support, including Tribal Mobility Fund Phase I support, to census blocks without 3G or better service, and determined that Mosaik Solutions (Mosaik) data is the best available data source for determining the availability of such service.³⁷ Accordingly, we have identified potentially eligible blocks

³² An applicant's claim of eligibility for the bidding credit available to Tribally-owned or -controlled providers is subject to review to verify the facts underlying the claim of ownership or control.

³³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17822-23, para. 489; 47 C.F.R. § 54.1004(d)(2).

³⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17822-23, para. 489; 47 C.F.R. § 54.1004(d)(3). Appropriate Tribal government officials are elected or duly authorized government officials of federally recognized American Indian Tribes and Alaska Native Villages. In the instance of the Hawaiian Home Lands, this engagement must occur with the State of Hawaii Department of Hawaiian Home Lands and Office of Hawaiian Affairs. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17869, para. 637 n.1053.

³⁵ 47 C.F.R. § 54.1004(d)(3).

³⁶ 47 C.F.R. § 54.1004(d)(1); *see also* Office of Native Affairs and Policy, Wireless Telecommunications Bureau, and Wireline Competition Bureau Issue Further Guidance on Tribal Government Engagement Obligation Provisions of the Connect America Fund, *Public Notice*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208, GN Docket No. 09-51, DA 12-1165, 27 FCC Rcd 8176 (2012), *pets. for recon. pending*.

³⁷ *USF/ICC Transformation Order*, 26 FCC Rcd at 17783-84, paras. 332, 334; *see also Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4729-30, para. 9. The Order identified American Roamer data as the best available source. In February 2012, subsequent to the release of the *USF/ICC Transformation Order*, American Roamer (continued....)

on Tribal lands using census blocks from the 2010 Census and the most recently available Mosaik data, from January 2013.

18. As the first step in our analysis, the Bureaus identified census blocks within Tribal lands using 2010 Census data.³⁸ The Bureaus then used geographic information system (GIS) software to determine whether the Mosaik data shows 3G or better wireless coverage at the centroid of each block.³⁹ If the Mosaik data did not show such coverage, the block was determined to be potentially eligible for Tribal Mobility Phase I support. Because support will be awarded based on the bids that will maximize the population covered by new mobile services, any of these census blocks without population were excluded. The Bureaus then excluded any blocks that, during the Auction 901 challenge process, were determined to be served or to be ineligible for Mobility Fund Phase I support because a provider had made a regulatory commitment to provide 3G or better wireless service or had received a funding commitment from a federal executive department or agency in response to the provider's commitment to provide 3G or better wireless service in that area.⁴⁰ In addition, the Bureaus identified those census blocks that were the subject of winning bids in Auction 901.⁴¹ Any census block that was the subject of a winning bid in Auction 901 and for which support is authorized at the conclusion of the Auction 901 long-form application review will not be eligible for Tribal Mobility Fund Phase I support. If prior to the release of the list of eligible census blocks the Bureaus determine that any of the identified winning bids from Auction 901 cannot be authorized, but would otherwise be eligible for Auction 902, then such eligible blocks will be made available.

19. Pursuant to the *USF/ICC Transformation Order*, we will also make ineligible for support any additional census blocks for which, notwithstanding the absence of 3G service, any provider has made a regulatory commitment to provide 3G or better wireless service, or has received a funding commitment from a federal executive department or agency in response to the carrier's commitment to provide 3G or better wireless service.⁴² Such federal funding commitments may have been made under, but are not limited to, BTOP and BIP. Furthermore, the Commission established certain bidder-specific restrictions.⁴³ Specifically, each applicant for Tribal Mobility Fund Phase I support is required to certify

(Continued from previous page) _____

changed its company name to Mosaik Solutions. See <http://www.mosaik.com> (visited Mar. 1, 2013). Accordingly, we refer to Mosaik data here.

³⁸ "Tribal lands" include any federally recognized Indian tribe's reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian Allotments, see 47 C.F.R. § 54.400(e), as well as Hawaiian Home Lands—areas held in trust for native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920, Act July 9, 1921, 42 Stat. 108, *et seq.*, as amended. *USF/ICC Transformation Order*, 26 FCC Rcd at 17711, para. 126 n.197. Tribal lands in Alaska, *i.e.*, the Annette Island Reserve and areas where federally recognized Alaska Native villages are located within the Alaska Native regions, were identified using 2010 Census data identifying the Annette Island Reserve and Alaska Native village statistical areas. For more information regarding Alaska Native village statistical areas, see http://www.census.gov/geo/reference/gtc/gtc_aiannha.html#anvsa (visited Mar. 1, 2013).

³⁹ Specifically, the Bureaus used ArcGIS software from Esri to determine whether the Mosaik data showed 3G or better coverage at each block's centroid. The following technologies were considered 3G or better: EV-DO, EV-DO Rev A, UMTS/HSPA, HSPA+, WiMAX, and LTE. We use the term "centroid" to refer to the internal point (latitude/longitude) of a census block polygon. For more information, see U.S. Census Bureau, Putting It All Together, http://lehd.did.census.gov/led/library/doc/PuttingItTogether_20100817.pdf (visited Mar. 1, 2013).

⁴⁰ *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4731-35, paras. 13-22. See American Recovery and Reinvestment Act of 2009, P.L. 111-5, 123 Stat. 115 (2009) (authorizing the Broadband Technology Opportunities Program (BTOP) and Broadband Initiatives Program (BIP)).

⁴¹ See *Auction 901 Closing Public Notice*, 27 FCC Rcd 12031.

⁴² *USF/ICC Transformation Order*, 26 FCC Rcd at 17786, paras. 341-42.

⁴³ *Id.* at 17802-03, para. 410.

that it will not seek support for any areas in which it had made a public commitment to deploy 3G or better wireless service by December 31, 2012.⁴⁴ In determining whether an applicant had made such a public commitment, we anticipate that we would consider any public statement made with some specificity as to both geographic area and time period. This restriction will not prevent a bidder from seeking and receiving support for an unserved area for which another provider had made such a public commitment.

20. Attachment A-1 released with this Public Notice provides a summary of the list of potentially eligible census blocks determined as described above. For each state and territory, Attachment A-1 provides the total number of potentially eligible census blocks and the total number of tracts, counties, Tribal lands, and proposed aggregated bidding areas. For each state and territory, Attachment A-1 also provides the total population, area, and road miles of the potentially eligible blocks. Attachment A-2 released with this Public Notice provides a list of the proposed aggregated bidding areas. For each area, Attachment A-2 provides the state, county, and Tribal land; the number of potentially eligible blocks; and the total population, area, and road miles of those blocks. Due to the large number of potentially eligible blocks, the complete list of the individual blocks will be provided in electronic format only, available as a separate “Attachment A” file at <http://wireless.fcc.gov/auctions/902/>.⁴⁵ For each potentially eligible block, individually identified by its Federal Information Processing Series (FIPS) code, the “Attachment A” file provides the population, area, and road miles of the block; and the associated state, county, tract, Tribe, Tribal land, and proposed aggregated bidding area.

21. If commenters think certain blocks included in the list should not be eligible for support, they should indicate which blocks and provide supporting evidence. Similarly, if commenters think certain blocks not included in the list should be eligible for support, they should indicate which blocks and provide supporting evidence. In particular, we note that, in the *USF/ICC Transformation Order*, the Commission required all wireless competitive ETCs in the high-cost program to review the list of eligible census blocks for the purpose of identifying any areas for which they have made a regulatory commitment to provide 3G or better service or received a federal executive department or agency funding commitment in exchange for their commitment to provide 3G or better service.⁴⁶ The Bureaus will entertain challenges to the list of potentially eligible census blocks only in the form of comments to this Public Notice.⁴⁷ The Commission concluded in the *USF/ICC Transformation Order* that more extended pre-auction review could cause undue delay in making one-time Phase I support available. Further, the Commission decided that providing for post-auction challenges would inject uncertainty and delay into the process.⁴⁸ Commenters identifying census blocks for removal and/or addition to our list of potentially eligible census blocks are encouraged to provide detailed information in support of their views.⁴⁹ In making such determinations for Auction 901, the Bureaus found demonstrations of coverage to be more credible and convincing where they were supported by maps, discussions of drive tests, explanation of

⁴⁴ See 47 C.F.R. § 54.1005(a)(5).

⁴⁵ A copy of Attachment A and any other documents relating to Auction 902 may be purchased from the Commission’s duplicating contractor, Best Copy and Printing, Inc. (“BCPI”), 445 12th Street, SW, Room CY-B402, Washington, DC 20554, 800-378-3160 or at <http://www.bcpweb.com>. When ordering documents from BCPI, please provide the appropriate FCC document number (for example, DA 13-323 for this Public Notice).

⁴⁶ *USF/ICC Transformation Order*, 26 FCC Rcd at 17786, para. 342.

⁴⁷ See section V below for a description of the applicable deadlines and filing procedures for such comments.

⁴⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17785, para. 337.

⁴⁹ As discussed below in section V, we request that commenters file courtesy copies of their comments electronically at the following address: auction902@fcc.gov. To the extent that commenters identify census blocks for removal and/or addition to our list of potentially eligible census blocks, we request that such lists be filed in MS Excel format through the Auction 902 e-mail box.

methodologies for determining coverage, and certifications by one or more individuals as to the veracity of the material provided.⁵⁰ For Auction 901, the Bureaus did not make changes to potentially eligible areas based on submissions making assertions of coverage without any supporting evidence.⁵¹

22. Based on a review of the comments and any related information, the Bureaus will provide a list of the specific census blocks eligible for support in Auction 902 when it releases the public notice announcing procedures for Auction 902. In addition to providing files containing this final list of census blocks and related data, the Bureaus anticipate providing an interactive mapping interface for this information on the Commission website. This interface could aid bidders in matching up their own information on the geographic areas in which they are interested with the blocks available in the auction. The files and/or the interactive mapping interface will also provide data such as associated population and area. We anticipate that the file formats and the interactive mapping interface will be very similar to those provided for Auction 901. If potential bidders believe that the Bureaus should not provide the same types of files and interactive mapping interface as those provided for Auction 901, or that the Bureaus should provide additional information or other tools, they should submit detailed comments describing the types of files, information, or tools requested and explaining the reasons for the request.⁵²

B. Establishing Unserved Population-Based Units

23. In Auction 902, the Bureaus will use population as the basis for calculating the number of units in each eligible census block for purposes of comparing bids and measuring the performance of Tribal Mobility Fund Phase I support recipients.⁵³ To establish the population associated with each census block eligible for Tribal Mobility Fund Phase I support, we will use the 2010 Census data made available by the Census Bureau. The “Attachment A” file at <http://wireless.fcc.gov/auctions/902/> includes the population for each potentially eligible census block.

24. We propose to include as eligible only those unserved census blocks where there is a population greater than zero. We seek comment on this proposal.

IV. ESTABLISHING AUCTION PROCEDURES

25. In this section, the Bureaus seek comment on establishing specific auction procedures that will govern the conduct of Auction 902.⁵⁴

A. Auction Design

26. Below we discuss and seek comment on which auction design is most appropriate. We also discuss related auction design options, including aggregation approaches, the coverage requirement, and awardee determination. We ask for input on these approaches and options, and request that commenters explain how their suggestions will promote the Commission’s objective in Tribal Mobility Fund Phase I of maximizing, within the \$50 million budget, the population with newly available 3G or better service.

⁵⁰ See *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4734-35, para. 20. We note that in light of the population-based metric used to determine the number of unserved units for Tribal Mobility Fund Phase I, “drive tests” used to demonstrate coverage may be conducted by means other than automobiles on roads. Providers may demonstrate coverage of an area with a statistically significant number of tests in the vicinity of residences being covered. See *USF/ICC Transformation Order*, 26 FCC Rcd at 17822, para. 488 n.806.

⁵¹ See *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4735, para. 21.

⁵² See section V below for a description of the applicable deadlines and filing procedures for such comments.

⁵³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17822, para. 488; 47 C.F.R. § 54.1004(b).

⁵⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17803, para. 411.

1. Reverse Auction Design

27. The Bureaus seek comment on which reverse auction design would be the most appropriate for the Tribal Mobility Fund Phase I auction. In the Notice of Proposed Rulemaking for Mobility Fund Phase I, the Commission proposed a single-round auction format to disburse funds.⁵⁵ A variety of commenters supported a format with more than one round of bidding, arguing that multiple rounds would maximize the benefits of the program through more informed bidding and more competitive bidding.⁵⁶ In the *USF/ICC Transformation Order*, the Commission indicated that a single-round sealed bid auction format would be most appropriate for Mobility Fund Phase I, but left the final determination to the Bureaus.⁵⁷ For the general Mobility Fund Phase I auction, we decided to implement a single-round auction format because we believed that the circumstances favoring a multiple-round auction—*i.e.*, when there are strong interactions among items and when bidders are unsure as to the market value of the item—were not significant enough in Auction 901 to outweigh our concerns about the complexity it would add to the auction.⁵⁸ For the purposes of Auction 902, we seek comment on whether we should adopt a single-round or a multiple-round reverse auction design.

28. *Single-Round Auction.* Under a single-round approach, during the single bidding round, each bid submitted by a bidder would indicate a per-pop support price at which the bidder is willing to meet our requirements to cover the population in eligible blocks covered by the bid. One advantage of the single-round format is that it would be simple and quick. We seek comment on whether a single-round approach would allow bidders to make informed bid decisions and to submit competitive bids. The purpose of the Tribal Mobility Fund Phase I auction mechanism is to identify whether and, if so, at what price providers are willing to extend advanced mobile coverage over unserved areas in exchange for a one-time support payment. Absent strategic behavior, these bid decisions largely depend upon internal cost structures, private assessments of risk, and other factors related to the providers' specific circumstances. Thus, we seek comment on whether the bid amounts of other auction participants are likely to contain information that will significantly affect an individual bidder's own cost assessments, and whether bidders would prefer to have the opportunity to react to the bids of others.

29. *Multiple-Round Auction.* In the particular context of the Tribal Mobility Fund Phase I, we seek further comment on whether an alternative auction design might be appropriate for Auction 902. In particular, we seek comment on whether we should use a multiple-round auction given the knowledge gained from the Mobility Fund Phase I auction and the smaller number of eligible areas, the likely fewer participants, and the smaller budget. Observing the variation in Auction 901 winning bids, potential bidders in Auction 902 are likely to realize the potential gain from strategically shading up their bids to be just low enough to be accepted, but no lower.⁵⁹ Calculating the optimal bid in this situation can be difficult, imposing a burden on bidders, and may result in relatively low-cost providers losing because they miscalculated. This difficulty can be mitigated in a multiple-round auction, such as a descending clock auction, because it does not provide the same opportunity for strategic behavior. We seek comment on whether it would be easier for bidders to formulate a successful bid strategy in a multiple-round auction such as a descending clock auction. If commenters support a multiple-round design, we seek

⁵⁵ Universal Service Reform, WT Docket No. 10-208, Mobility Fund, *Notice of Proposed Rulemaking*, FCC 10-182, 25 FCC Rcd 14716, 14734, para. 58 (2010).

⁵⁶ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17803-04, para. 414 (summarizing comments); see also *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4761, para. 128 (noting that two commenters responding to the Bureaus' public notice seeking comment on Auction 901 procedures indicated a preference for a multiple round auction format).

⁵⁷ *USF/ICC Transformation Order*, 26 FCC Rcd at 17803-04, paras. 413-15; see 47 C.F.R. §1.21003(b).

⁵⁸ *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4761, para. 129.

⁵⁹ See *Auction 901 Closing Public Notice*, 27 FCC Rcd 12031.

comment on which design would be most appropriate for Auction 902. Possibilities could include a descending clock auction (in which winning bidders could all be paid the same amount per-pop) and a descending simultaneous multiple round format. Because the Tribal Mobility Fund Phase I auction is smaller in scale, with fewer eligible areas, than the Mobility Fund Phase I auction, the relative benefits of a single-round auction design in terms of simplicity of implementation and time to completion are likely reduced relative to a multiple-round format.

2. Census Blocks and Aggregations

30. The Commission determined that the census block should be the minimum geographic building block for which support is provided, but left to the Bureaus the task of deciding how to facilitate bidding on aggregations of eligible census blocks.⁶⁰ Some aggregation of census blocks may be necessary because census blocks are numerous and can be quite small.⁶¹ The 5,554 census blocks potentially eligible for support under Tribal Mobility Fund Phase I have an average area of approximately 2.1 square miles. We believe that on average these blocks are much smaller than the average area covered by a single cell site, which is likely to be the minimum incremental geographic area of expanded coverage with Tribal Mobility Fund Phase I support. We propose bidding procedures that will define biddable items consisting of certain aggregations of eligible census blocks—and for this purpose suggest using census tracts and Tribal land boundaries, as further described below.

31. *Aggregation of census blocks by tracts and Tribal lands.* We seek comment on an approach that would require bidding on biddable items consisting of predefined aggregations of eligible census blocks. For purposes of bidding, all eligible census blocks would be grouped by the tracts in which they are located. In the case of tracts with more than one Tribal land, the blocks in that tract would be grouped by Tribal land. Bidders would bid by these aggregated areas, not on individual blocks.

32. Under this approach, for each aggregated area that a bidder bids on, the bidder would indicate a per-unit price to cover the population in the eligible census blocks within that area. The auction would assign support to awardees equal to the per-pop rate of their bid multiplied by the population associated with the eligible census blocks within the aggregated area as shown in the information that will be provided by the Bureaus prior to the auction. Under this approach, bidders would be able to bid on multiple aggregated areas and win support for any or all of them.

33. As noted above, we release with this Public Notice a list of 5,554 census blocks that would be considered potentially eligible under our criteria. These blocks are located within 258 Census tracts and 292 Tribal lands. If we bundled these unserved blocks into tracts and parts of tracts within different Tribal lands for bidding, there would be 417 aggregated areas. One goal in suggesting aggregated areas for this purpose is to create biddable geographic areas closer in scale to minimum buildout areas than census blocks would be. This approach would make it less important that bidders have the ability to place all-or-nothing package bids than would be the case if the basic bidding units were individual census blocks. Further, this approach would lend itself to a simpler method of determining winning bids, as discussed below.

34. In the *USF/ICC Transformation Order*, the Commission noted that because census blocks in Alaska are so much larger on average than census blocks elsewhere, we should consider permitting bidding on individual census blocks in Alaska, a suggestion we adopted for Mobility Fund Phase I.⁶² Under the tract and Tribal land aggregation method proposed above, however, the size of the biddable items in Alaska would be similar to those in other states. Therefore, we propose and seek comment on using the same aggregation of blocks into biddable items in Alaska as we do elsewhere.

⁶⁰ *USF/ICC Transformation Order*, 26 FCC Rcd at 17787-88, para. 346; 47 C.F.R. § 54.1002(a).

⁶¹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17787-88, para. 346.

⁶² *Id.* at 17788, para. 347; see *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4763-64, paras. 138-40.

35. We ask whether commenters believe that further packaging of the predefined aggregations would be helpful. If so, they should explain the specific need for package bidding and their proposed approach. For example, could such a need be met by allowing bidding on a package of all of the tracts and parts of tracts within a Tribal land? We also seek comment on whether a multiple round format, such as a descending clock auction, could facilitate aggregation by allowing bidders to shift bids if outbid on a piece of a group of areas they were seeking to serve.

36. *Coverage requirement.* Under this approach, awardees would be required to provide voice and broadband service meeting the established minimum standards over at least 75 percent of the population associated with the eligible blocks in each aggregated area for which they receive support.⁶³ Because Census data does not specify how population is distributed within a census block, we seek comment on how to determine whether this coverage requirement is met. If a provider demonstrates new coverage over the entirety of an eligible census block, we can assume coverage of the entire population of that census block. However, we seek input on how to evaluate the population served by new coverage where a provider demonstrates new coverage over part of an eligible census block. Should we use the area covered and assume that the population is evenly distributed? For example, if an awardee covered 75% of the area, we would conclude that the awardee was covering 75% of the population. We seek comment on this and other methods.

3. Determining Awardees

37. *Single-Round Auction.* To determine awardees in a single-round auction under our proposed aggregation approach, the auction system would rank all bids from lowest to highest based on the per-pop bid amount, and assign support first to the lowest per-pop bid. The auction system would continue to assign support to the next lowest per-pop bids in turn, as long as support had not already been assigned for that geographic area, and would continue until the sum of support funds of the winning bids was such that no further winning bids could be supported given the funds available.⁶⁴ Ties among identical bids—in the same amount for covering the same aggregated area—would be resolved by assigning a random number to each bid and then assigning support to the tied bid with the highest random number. A bidder would be eligible to receive support for each of its winning bids equal to the per-pop rate of a winning bid multiplied by the population in the eligible census blocks covered by the bid, subject to meeting the obligations associated with receiving support. For bidders claiming eligibility for the bidding credit available to Tribally-owned or -controlled providers, the auction system would reduce the Tribal entity's bid amount by 25 percent for the purpose of comparing it to other bids, thus increasing the likelihood that Tribally-owned and -controlled entities would receive funding.

38. Because using the ranking method would likely result in monies remaining available from the budget after identifying the last lowest per-pop bid that does not exceed the funds available, we seek comment on what to do in these circumstances. If we use an approach similar to that used for Auction 901, we would continue to consider bids in order of per-pop bid amount while skipping bids that would require more support than is available. We would award such bids as long as funds are available. We seek comment on this approach and others. Alternatives could include, for example, not awarding any

⁶³ The required minimum standards for service will depend on whether a winning bidder elects to deploy 3G or 4G service. *USF/ICC Transformation Order*, 26 FCC Rcd at 17792-93, paras. 365, 367; 47 C.F.R. §§ 54.1006(a)-(b). This coverage requirement would apply to the total population in the eligible census blocks in each predefined aggregated area on which bids are based. Pursuant to the *USF/ICC Transformation Order*, awardees meeting the minimum coverage requirement could receive their winning bid amount for that population and for any additional population covered in excess of the 75 percent minimum, up to 100 percent of the population associated with the unserved blocks, subject to the rules on disbursement of support. See *USF/ICC Transformation Order*, 26 FCC Rcd at 17793, para. 367; 47 U.S.C. § 54.1008.

⁶⁴ When calculating how much of the budget remains, for each winning bid the auction system will multiply the per-pop rate bid by the total population in the uncovered blocks. This is because an awardee may receive support for up to 100 percent of the population in the blocks for which it receives support.

further support; awarding support as long as the per-pop bid amount does not exceed the last bid by more than twenty percent; or, if there is a set of tied bids all of which cannot be supported, awarding support to that combination of bids that will most nearly exhaust the remaining funds.

39. *Multiple-Round Auction.* If commenters support a multiple-round design, we seek comment on appropriate methods for determining awardees under proposed auction design alternatives. In a descending clock auction format, for example, the auction system would announce a per-pop price, and bidders would submit bids for the eligible areas they would cover. If the cost of accepting those bids (population in the areas bid on times the per-pop price) exceeds the budget, the price would be lowered. In each round bidders would be required to satisfy an activity requirement, providing an incentive for consistent bidding throughout the auction. Rounds would continue until the cost of accepting all current bids was below the budget.

40. One issue that must be addressed is the case of more than one bid for the same area, since we propose to award only one subsidy per area. A possible solution would be to continue running the clock in those areas where there are multiple bids until only one bid remains. If the clock were initially stopped when the budget requirement was just met, continuing to run the clock in the areas with multiple bids would result in not spending all the funds. We seek comment on how to address this “overshooting.” Possible solutions may include permitting intra-round bids that allow bidders to indicate their change in supply at specified prices between the opening and closing prices in each round.

B. Auction Information Procedures

41. Under the Commission’s rules on competitive bidding for high-cost universal service support adopted in the *USF/ICC Transformation Order*, the Bureaus have discretion to limit public disclosure of certain bidder-specific application and bidding information until after the auction, as we do in the case of spectrum license auctions.⁶⁵ Consistent with practice in recent spectrum license auctions and in Auction 901, the Bureaus propose to conduct Auction 902 using procedures for limited information disclosure.⁶⁶ The Bureaus propose to withhold, until after the close of bidding and announcement of auction results, the public release of information from bidders’ short-form applications regarding their interest in particular eligible census blocks. If a single-round auction is used, we also propose not to reveal any information that may reveal the identities of bidders placing bids and taking other bidding-related actions. If we decide to implement a descending simultaneous multiple round or descending clock auction, we may wish to release additional information about bidding-related actions during the auction, and we seek comment on what information should be released under alternative auction design proposals. After the close of bidding, bidders’ area selections, bids, and any other bidding-related actions and information would be made publicly available. The Bureaus seek comment on their proposal to implement limited information procedures in Auction 902.

C. Auction Structure

1. Bidding Period

42. The Bureaus will conduct Auction 902 over the Internet. For the single round of bidding in Auction 901, we did not provide a telephonic bidding option. In Commission spectrum license auctions, telephonic bidding has served as a backup to on-line bidding. We seek comment on whether telephonic bidding should be available in Auction 902, particularly if we use a multiple-round format.

⁶⁵ *USF/ICC Transformation Order*, 26 FCC Rcd at 17807, para. 431; see 47 C.F.R. § 1.21003(b)(1). See also, e.g., Auction of 700 MHz Band Licenses Scheduled for January 24, 2008; Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for Auctions 73 and 76, *Public Notice*, DA 07-4171, 22 FCC Rcd 18,141, 18,181-85 paras. 145-56 (2007); Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 66, *Public Notice*, FCC 06-47, 21 FCC Rcd 4562, 4600-05 paras. 140-57 (2006).

⁶⁶ See *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4766-67, para. 147.

43. The start time for bidding will be announced in a public notice to be released at least one week before the start of the auction. We seek comment on this proposal.

2. Information Relating to Auction Delay, Suspension, or Cancellation

44. For Auction 902, the Bureaus propose that, by public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical failures, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding.⁶⁷ In such cases, the Bureaus, in their sole discretion, may elect to resume the auction or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureaus emphasize that exercise of this authority would be solely within the discretion of the Bureaus. The Bureaus seek comment on this proposal.

D. Bidding Procedures

1. Maximum Bids and Reserve Prices

45. Under the Commission's rules on competitive bidding for high-cost universal service support adopted in the *USF/ICC Transformation Order*, the Bureaus have discretion to establish maximum acceptable per-unit bid amounts and reserve amounts, separate and apart from any maximum opening bids.⁶⁸

46. The Bureaus concluded that for Auction 901, a reserve price was not needed to guard against unreasonably high winning bids because cross-area competition for support from a budget that was not likely to cover support for all of the areas receiving bids would constrain the bid amounts.⁶⁹ We seek comment on whether any maximum acceptable per-unit bid amounts, reserve amounts, or maximum opening bid amounts would be appropriate for Auction 902. Although the \$50 million budget available for Auction 902 is less than the \$300 million budget available for Auction 901, the number of eligible census blocks is also significantly lower in this auction. Will cross-area competition for support adequately constrain bid amounts? We further seek comment on what methods should be used to calculate reserve prices and/or maximum or minimum bids if they are adopted. Commenters are advised to support their claims with valuation analyses and suggested amounts or formulas. We also seek comment on the appropriate policy if, at the reserve price, less than the full budget is exhausted.

2. Bid Removal

47. For Auction 902, the Bureaus propose and seek comment on bid removal procedures. In the case of a single-round auction, we propose that before the end of the single round of bidding, a bidder would have the option of removing any bid it has placed. By removing selected bids, a bidder may effectively "undo" any of its bids placed within the single round of bidding. Once the single round of bidding ends, a bidder may no longer remove any of its bids. For multiple-round auction designs, we seek comment on potential bid removal mechanisms and whether bidders should be permitted to withdraw bids from previous rounds and, if so, subject to what limitations.

E. Default Payments

48. In the *USF/ICC Transformation Order*, the Commission determined that a winning bidder in a reverse auction for high-cost universal service support that defaults on its bid or on its performance obligations will be liable for a default payment.⁷⁰ Bidders selected by the auction process to receive

⁶⁷ 47 C.F.R. § 1.21003(b)(11).

⁶⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17806, paras. 423-24; 47 C.F.R. § 1.21003(b)(4).

⁶⁹ *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4767-68, para. 152.

⁷⁰ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17810, 17813-14, paras. 444, 458-61; 47 C.F.R. §§ 1.21004(b), 54.1006(f).

support have a binding obligation to file a post-auction long-form application—by the applicable deadline and consistent with other requirements of the long-form application process—and failure to do so will constitute an auction default.⁷¹ Likewise, an auction default occurs when a winning bidder is found ineligible to be a recipient of support or is disqualified or has its long-form application dismissed for any reason.⁷² In addition, the Mobility Fund Phase I rules provide that the failure, by any winning bidder authorized to receive support, to meet its minimum coverage requirement or adequately comply with quality of service or any other requirements will constitute a performance default.⁷³ The Bureaus have delegated authority to determine in advance of Auction 902 the methodologies for determining the auction and performance default payments.⁷⁴ Here we seek comment on how to calculate the auction default payments that will be applicable for Auction 902.⁷⁵

1. Auction Default Payment

49. As noted in the *USF/ICC Transformation Order*, failure to fulfill auction obligations, including those undertaken prior to the award of any support funds, may undermine the stability and predictability of the auction process and impose costs on the Commission and the Universal Service Fund (USF).⁷⁶ To safeguard the integrity of the Tribal Mobility Fund Phase I auction, we seek comment on an appropriate payment for auction defaults, which occur if a bidder selected by the auction mechanism does not become authorized to receive support after the close of the bidding, *e.g.*, fails to timely file a long-form application, is found ineligible to be a recipient of support or is disqualified, or has its long-form application dismissed for any reason.⁷⁷ An auction default could occur at any time between the close of the bidding and the authorization of support for each of the winning bidders. For example, an auction default would occur if a winning bidder failed to file its long-form application by the announced deadline. Similarly, an auction default could occur later in the long-form application review process if a winning bidder that timely filed its long-form application is determined to be ineligible to be a recipient of support or is disqualified.

50. In determining what size payment would be appropriate for a bidder that defaults in the auction, our goals are to ensure the stability and predictability of the auction process by deterring insincere or uninformed bidding without establishing such a high amount as to unduly deter participation in the auction. Such a decision must be made in light of the procedures established for the auction, including auction design.⁷⁸ According to the Commission's rules, if the auction default payment is determined as a percentage of the defaulted bid amount, the default payment will not exceed 20 percent of the total defaulted bid.⁷⁹ We propose to use a rate of five percent of the total defaulted bid. We would apply the percentage to the total amount of support based on the bid amount for the geographic area covered by the defaulted bid(s). We believe that this amount, below our maximum percentage, will protect against the costs to the Commission and the USF of auction defaults and provide bidders

⁷¹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17808, para. 436; 47 C.F.R. § 1.21004(a).

⁷² *USF/ICC Transformation Order*, 26 FCC Rcd at 17813, para. 458; 47 C.F.R. § 1.21004(b).

⁷³ 47 C.F.R. § 54.1007(c).

⁷⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17810, 17814, paras. 444, 460; *see also* 47 C.F.R. §§ 1.21004(b), 54.1006(f).

⁷⁵ We note that neither an auction default nor a performance default would result in a change to the set of awardees originally selected by the auction mechanism.

⁷⁶ *See USF/ICC Transformation Order*, 26 FCC Rcd at 17813-14, paras. 458-61.

⁷⁷ *See id.* at 17813-14, paras. 458, 460; *see* 47 C.F.R. § 1.21004(b).

⁷⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17814, para. 460.

⁷⁹ 47 C.F.R. § 1.21004(b).

sufficient incentive to fully inform themselves of the obligations associated with participation in the Tribal Mobility Fund Phase I program and to commit to fulfilling those obligations. Under this method of calculating the default payment, bidders would be aware ahead of time of the exact amount of their potential liability based on their bids. We note that this proposal is the same percentage instituted for Auction 901.⁸⁰

51. We seek comment on this proposal. We ask commenters to assess whether our proposal to use an auction default payment percentage of five percent will be adequate to deter insincere or uninformed bidding, and safeguard against costs to the Commission and the USF that may result from such auction defaults, without unduly discouraging auction participation, particularly given that liability for the auction default payment will be imposed without regard to the intentions or fault of any specific defaulting bidder. Are there any circumstances unique to bids to serve Tribal lands that should be considered in our analysis? We also seek comment on whether we should use an alternative methodology, such as basing the auction default payment on the difference between the defaulted bid and the next best bid(s) to cover the same population as without the default.⁸¹ Commenters advocating such an approach should explain with specificity how such an approach might work under the options we present for auction design. In addition, we seek comment on whether, prior to bidding, all applicants for Auction 902 should be required to furnish a bond or place funds on deposit with the Commission in the amount of the maximum anticipated auction default payment.⁸² We ask for specific input on whether a bond or deposit would be preferable for this purpose and on methodologies for anticipating the maximum auction default payment.

2. Performance Default Payment

52. Pursuant to the Mobility Fund Phase I rules adopted in the *USF/ICC Transformation Order*, a winning bidder will be subject to a performance default payment if, after it is authorized to receive support, it fails to meet its minimum coverage requirement, other service requirements, or any other condition of Tribal Mobility Fund Phase I support.⁸³ In addition to being liable for a performance default payment, the recipient will be required to repay the Mobility Fund all of the support it has received and, depending on the circumstances involved, could be disqualified from receiving any additional Tribal Mobility Fund, general Mobility Fund, or other USF support.⁸⁴ We may obtain its performance default payment and repayment of a recipient's Tribal Mobility Fund Phase I support by drawing upon the irrevocable stand-by LOC that winning bidders will be required to provide.

53. We propose to assess a 10 percent default payment where a winning bidder fails to satisfy its performance obligations or any of the requirements and conditions for the support. The percentage would be applied to the total amount of support based on the bid amount for the geographic area covered by the defaulted bid(s). Under this proposal, the LOC would include an additional 10 percent based on the total level of support for which a winning bidder is eligible. In determining what size payment would be appropriate for a performance default, our goals are to ensure the stability and predictability of the auction process by deterring insincere or uninformed bidding without establishing such a high amount as to unduly deter participation in the auction. While both auction defaults and performance defaults may threaten the integrity of the auction process and impose costs on the Commission and the USF, an auction default occurs earlier in the process and may permit an earlier alternative use of the funds that were

⁸⁰ See *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4777, para. 187.

⁸¹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17814, para. 460.

⁸² *Id.*; see also 47 C.F.R. § 1.21001(c).

⁸³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17811, 17814, paras. 447, 461.

⁸⁴ See 47 C.F.R. § 54.1006(f).

assigned to the defaulted bid, consistent with the purposes of the universal service program.⁸⁵ Thus, we believe that the amount of a performance default payment should be higher than the amount of the auction default payment. The Bureaus proposed, and adopted, a 10 percent performance default penalty for Auction 901.⁸⁶ We seek comment on our proposal for calculating the performance default payment. Will a performance default payment of 10 percent of the total amount of support for which the winning bidder defaults be effective in ensuring that those authorized to receive support will be capable of meeting their obligations and protect against costs to the Commission and the USF, without unduly discouraging auction participation? Are there any circumstances unique to provisioning service to Tribal lands that should be considered in our analysis?

F. Reasonably Comparable Rates

54. *Reasonably Comparable Rates.* Tribal Mobility Fund Phase I recipients must certify that they offer service in areas with support at consumer rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas.⁸⁷ The Commission delegated authority to the Bureaus to specify how support recipients could demonstrate compliance with this rate certification.⁸⁸ The Commission directed the Bureaus to develop surveys of voice and broadband rates generally that should be completed before the later phases of the Connect America Fund and the Mobility Fund.⁸⁹ In order to offer Mobility Fund Phase I support at the earliest time feasible, however, the Commission recognized that the Bureaus might have to implement an approach to the reasonably comparable rates requirement without being able to rely upon the information that will be collected through the surveys.⁹⁰ We propose to do so in implementing Tribal Mobility Fund Phase I.

55. We propose that recipients of Tribal Mobility Fund Phase I support may demonstrate compliance with the reasonably comparable rates requirement in the same manner as recipients of general Mobility Fund Phase I support. We propose that a supported provider must demonstrate that its required stand-alone voice plan, and one service plan that offers data services, if it offers such plans, are (1) substantially similar to a service plan offered by at least one mobile wireless service provider in an urban area, and (2) offered at or below the rate for the matching urban service plan.⁹¹ We seek comment on this proposal and any alternatives. Commenters offering alternatives to our proposal should address the feasibility of implementing their alternatives in advance of the deadlines for parties to participate in competitive bidding for Tribal Mobility Fund Phase I support. In addition, we request that commenters describe the costs and benefits associated with the position they advocate.

56. For purposes of Tribal Mobility Fund Phase I, any rate equal to or less than the highest rate charged for a matching service in an urban area would be reasonably comparable to, *i.e.*, within a

⁸⁵ *USF/ICC Transformation Order*, 26 FCC Rcd at 17810-11, 17815, paras. 446, 462.

⁸⁶ *See Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4778, para. 192.

⁸⁷ 47 C.F.R. § 54.1005(b)(2)(viii). Recipients will be subject to this requirement for five years after the date of award of support. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17797, para. 385. Recipients must offer service plans in supported areas that meet the public interest obligations specified in the Commission's Mobility Fund rules and that include a stand-alone voice service plan. *See* 47 C.F.R. § 54.1006.

⁸⁸ *See USF/ICC Transformation Order*, 26 FCC Rcd at 17797, para. 385.

⁸⁹ *See id.* at 17694, 17708-09, paras. 85, 114.

⁹⁰ *See id.* at 17797, para. 385.

⁹¹ *See Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4774-75, para. 180. See below for a discussion of how "urban areas" should be defined for this purpose. We note that any provider that itself offers the same service plan for the same rate in a supported area and in an urban area would be able to meet this requirement.

reasonable range of, rates for similar service in urban areas.⁹² Urban areas are generally served by multiple and diverse providers offering a range of rates and service offerings in competition with one another.⁹³ Consequently, we presume that even the highest rate would qualify as “being within a reasonable range of rates for similar service in urban areas,”⁹⁴ because the rates for the matching urban services reflect the effects of competition in the urban area. Should we require additional information to validate this assumption? For example, should an urban service used for matching be required to have a certain number of subscribers or percentage of the relevant market in order to demonstrate its market acceptance?⁹⁵ Do we need to be concerned that recipients may seek to game this standard by using an urban rate for comparison that does not reflect a true market rate? How can we address any such concerns?

57. We would retain discretion to consider whether and how variable rate structures should be taken into account. For example, should a supported stand-alone voice plan that offers 1,000 minutes a month for \$50 and additional minutes at \$0.08 per minute be considered more expensive than a plan in an urban area that offers 2,000 minutes a month for \$100 and additional minutes at \$0.10 per minute? There may be circumstances under which data plans with equivalent prices-per-unit “match” each other even if there are other differences in the plans. We propose to address such issues on a case-by-case basis and welcome comment on how to address such circumstances.

58. To provide recipients with flexibility to tailor their offerings to consumer demand while complying with the rule, we propose that we deem a Tribal Mobility Fund Phase I support recipient compliant with the terms of the required certification if it can demonstrate that its rates for services satisfy the requirements, and if it provides supporting documentation. We seek comment on all aspects of this proposal, in particular whether it meets the goal of assuring that supported services are provided at rates reasonably comparable to those in urban areas, while allowing recipients to have appropriate flexibility in structuring their offerings. We also seek comment on any potential alternatives. For example, is there a readily available set of benchmark urban rates for mobile voice and broadband service that we could use with respect to Tribal Mobility Fund Phase I?

⁹² Adopting this approach for purposes of Tribal Mobility Fund Phase I does not prejudice the approach to be taken with respect to Phase II of the Mobility Fund or the Connect America Fund generally. We note that in line with the approach in Auction 901, we do not propose to adopt an urban rate floor for recipients of Tribal Mobility Fund Phase I support. See Mobility Fund Phase I Auction Scheduled for September 27, 2012; Comment Sought on Competitive Bidding Procedures for Auction 901 and Certain Program Requirements, *Public Notice*, AU Docket No. 12-25, DA 12-121, 27 FCC Rcd 530, 547-48, para. 67 n.75 (2012); cf. *USF/ICC Transformation Order*, 26 FCC Rcd at 17749-51, paras. 235-238 (limiting high-cost support where local end-user rates plus state regulated fees do not meet an urban rate floor representing the national average of local rates plus such state regulated fees).

⁹³ Most consumers in the 100 most populated CMAs in the country are covered by between four to six mobile wireless providers. Commission analysis of October 2011 Mosaik (then American Roamer) coverage maps and Census 2010 block data.

⁹⁴ Under this approach, the supported party must offer services at rates within the range but that do not exceed one particular rate that is presumed to be a part of that range. Previously, rates for supported services in high-cost, insular and rural areas served by non-rural carriers were presumed to be reasonably comparable to urban rates nationwide if they fell below the national rate benchmark, which was set at two standard deviations above the average urban rate as reported in an annual rate survey published by the Wireline Competition Bureau. See High-Cost Universal Service Support, WC Docket No. 05-337, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Order on Remand and Memorandum Opinion and Order*, FCC 10-56, 25 FCC Rcd 4072, 4076, para. 8 (2010), *pet. for review den'd*, *Vermont Public Service Bd. v. F.C.C.*, 661 F.3d 54 (D.C. Cir. 2011). Thus, while the approaches differ, both serve to assure that rates for supported services are reasonably comparable to rates in urban areas.

⁹⁵ A supported provider using its own urban rates would have little trouble making such a demonstration. However, would other supported providers find the range of urban plans with publicly available subscriber data by plan too limited? Are there alternative criteria that urban plans should meet before their rates may be used for comparison?

59. *Urban Areas*. For purposes of this requirement, we propose defining “urban area” as one of the 100 most populated CMAs in the United States.⁹⁶ Multiple providers currently serve these areas—99.2 percent of the population in these markets is covered by between four to six operators—offering a range of different service plans at prices generally constrained by the numerous providers.⁹⁷ Are there other definitions of “urban area” that commenters believe we should consider for purposes of this requirement?

60. We propose to make a specific exception for supported parties serving Alaska in light of the distinct character of Alaska and the related costs of providing service, and in line with the approach adopted for Auction 901.⁹⁸ We propose that supported parties in Alaska may demonstrate comparability by comparison with rates offered in the CMA for Anchorage, Alaska. In this regard, we note that the Anchorage, Alaska CMA has a population of over 250,000 and four wireless providers, which indicates that, while reflecting the particular challenges of offering service in Alaska, competition for customers there could act to keep rates for offered services reasonable.⁹⁹

V. DEADLINES AND FILING PROCEDURES

61. Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

62. *Electronic Filers*: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.

63. *Paper Filers*: Parties who choose to file by paper must file an original and one copy of each filing. All paper submissions should include a reference to “AU Docket No. 13-53” prominently displayed on the first page. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12th Street, SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. Eastern Time (ET). All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

64. *Auction 902 E-mail Box*: The Bureaus also request that a copy of all comments and reply comments be submitted electronically to the following address: auction902@fcc.gov. To the extent that commenters identify census blocks for removal and/or addition to our list of potentially eligible census blocks, we request that such lists be filed in MS Excel format through the Auction 902 e-mail box.

⁹⁶ A list of the top 100 CMAs by population is included in Attachment B.

⁹⁷ Commission analysis of October 2011 Mosaik (then American Roamer) coverage maps and Census 2010 block data.

⁹⁸ *See Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4774, para. 179.

⁹⁹ *Id.*

65. *People with Disabilities*: To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

66. The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹⁰⁰ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

VI. CONTACTS

67. For further information concerning this proceeding, contact the offices listed below:

Auctions and Spectrum Access Division, Wireless Telecommunications Bureau

For auction process questions: Lisa Stover at (717) 338-2868
For Tribal Mobility Fund Phase I questions: Patricia Robbins at (202) 418-0660

Telecommunications Access Policy Division, Wireline Competition Bureau

For general universal service questions: Alex Minard at (202) 418-7400

Office of Native Affairs and Policy, Consumer and Governmental Affairs Bureau

For questions regarding Tribal lands and Tribal governments: Geoffrey Blackwell at (202) 418-3629
Irene Flannery at (202) 418-1307

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¹⁰⁰ 47 C.F.R. §§ 1.1200 *et seq.*